

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804
Attorneys for Complainant

FILED

MAR 19 2008

Board of Vocational Nursing
and Psychiatric Technicians

7
8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke
11 Probation Against,

Case No. VN-2005-1646

12 **DONNA CHARLENE TATUM**
13 **162 B Bellway**
Ventura, CA 93001
14 **Vocational Nurse License No. VN 143008**

OAH No. L2007120738

PETITION TO REVOKE PROBATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Petition to
19 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
20 Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

21 2. On or about January 19, 1989, the Board of Vocational Nursing and Psychiatric
22 Technicians issued Vocational Nurse License Number VN 143008 to Donna Charlene Tatum
23 ("Respondent"). The Vocational Nurse License was in full force and effect at all times relevant
24 to the charges brought herein and will expire on March 31, 2012, unless renewed.

25 3. In a disciplinary action entitled "In the Matter of Accusation Against Donna Charlene
26 Tatum," Case No. VN-2005-1646, the Board of Vocational Nursing and Psychiatric Technicians,
27 issued a decision, effective September 13, 2008, in which Respondent's Vocational Nurse
28 License was revoked. However, the revocation was stayed and Respondent's Vocational Nurse

1 License was placed on probation for a period of two years with certain terms and conditions. A
2 copy of that decision is attached as Exhibit A and is incorporated by reference.

3 **JURISDICTION**

4 4. This Petition to Revoke Probation is brought before the Board of Vocational Nursing
5 and Psychiatric Technicians ("Board"), Department of Consumer Affairs, under the authority of
6 the following laws. All section references are to the Business and Professions Code unless
7 otherwise indicated.

8 **STATUTORY PROVISIONS**

9 5. Pursuant to Code section 2875, "Every licensee may be disciplined as provided in this
10 article. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part
11 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers
12 granted therein."

13 **PETITION TO REVOKE PROBATION**

14 6. Grounds exist for revoking probation and imposing the order of revocation of
15 Respondent's Vocational Nurse License No. 143008. Condition 12 of the Board's decision states:

16 "If the Respondent violates the conditions of his/her probation, the Board
17 after giving the Respondent notice and an opportunity to be heard, may set aside
18 the stay order and impose the stayed discipline (revocation/suspension) of the
19 Respondent's license. If during the period of probation, an accusation or petition to
20 revoke probation has been filed against Respondent's license or the Attorney
21 General's Office has been requested to prepare an accusation or petition to revoke
22 probation against the Respondent's license, the probationary period shall
23 automatically be extended and shall not expire until the accusation or petition has
24 been acted upon by the Board. Upon successful completion of probation, the
25 Respondent's license will be fully restored."

26 7. Respondent has violated the conditions of probation, as set forth in the following
27 paragraphs:

28 **FIRST CAUSE TO REVOKE PROBATION**

(Failed to Work in Licensed Capacity)

8. At all times after the effective date of Respondent's probation, Condition 7 stated:

"EMPLOYMENT REQUIREMENTS AND LIMITATIONS.

During probation, the Respondent shall work in his/her licensed

1 capacity in the state of California. This practice shall consist of no
2 less than six continuous months and of no less than twenty hours
per week.

3 While on probation, Respondent shall not work for a nurses'
4 registry or in any private duty position, a temporary nurse
5 placement agency, as a faculty member in an accredited or
6 approved school of nursing, or as an instructor in a Board approved
7 continuing education course except as approved, in writing, by the
Board. Respondent shall work only on a regularly assigned,
identified and predetermined work site(s) and shall not work in a
float capacity except as approved, in writing, by the Board."

8 9. Respondent's probation is subject to revocation because she failed to comply with
9 Probation Condition 7, referenced above. The facts and circumstances regarding this violation
10 are as follows:

11 a. Respondent has failed to work in her licensed capacity for a minimum of six
12 continuous months and no less than twenty hours per week.

13 **SECOND CAUSE TO REVOKE PROBATION**

14 **(Failed to Provide Proof of Completion of Educational Courses)**

15 10. At all times after the effective date of Respondent's probation, Condition 9 stated:

16 "COMPLETION OF EDUCATIONAL COURSE(S). Respondent,
17 at his or her own expense, shall enroll and successfully complete a
18 course(s) substantially related to the violation(s) no later than the
19 end of the first year of probation; or the Respondent shall be
suspended from practice, until he or she has enrolled in and has
successfully completed the specified coursework.

20 The coursework shall be in addition to that required for license
21 renewal. The Board shall notify the respondent of the course
22 content and number of contact hours required. Within thirty days
23 of the Board's written notification of assigned coursework,
Respondent shall submit a written plan to comply with this
24 requirement. The Board shall approve such plan prior to enrollment
in any course of study.

25 Upon successful completion of the course, Respondent shall cause
26 the instructor to furnish proof to the Board within thirty days of
course completion."

11. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

- a. Respondent failed to complete the assigned courses within the first year of probation.
- b. Respondent failed to submit certificates showing that she completed the required courses.

THIRD CAUSE TO REVOKE PROBATION

(Failed to Pay Board Costs)

12. At all times after the effective date of Respondent's probation, Condition 11 stated:
 "COST RECOVERY REQUIREMENTS. Where an order for recovery of costs is made, the Respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. The Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one year period.

Except as provided above, the Board shall not renew or reinstate the license of any Respondent who has failed to pay all the costs as directed in a Decision.”

13. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 11, referenced above. The facts and circumstances regarding this violation are as follows:

- a. Respondent was ordered to pay Board costs in the amount of \$2,477.55.
- b. Respondent submitted payments totaling \$788.16.
- c. Respondent has failed to pay the balance due to the Board in the amount of \$1,689.39.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

4
5
6
7
8

10
11

13

18
19

21
22
23

25

1 DATED: November 19, 2010.



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

6 LA2010503865
7 60573879.doc

Exhibit A

Decision and Order

Board of Vocational Nursing and Psychiatric Technicians Case No. VN-2005-1646

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2005-1646

DONNA TATUM
5656 Aurora Drive
Ventura, CA 93003

OAH No. L2007120738

Vocational Nurse License
No. VN 143008

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
Director of the Department of Consumer Affairs¹ as the final Decision in the above-entitled matter.

This Decision shall become effective on Sept. 13, 2008.

IT IS SO ORDERED this 6th day of August 2008.



PATRICIA HARRIS
Deputy Director, Board/Bureau Support
Department of Consumer Affairs

¹Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE
BOARD OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS

In the Matter of the Accusation Against:

DONNA TATUM,

Vocational Nurse License No. VN 143008

Respondent.

Case No. VN-2005-1646

OAH No: L2007120738

PROPOSED DECISION

On April 2, 2008, Deborah Myers, Administrative Law Judge, Office of Administrative Hearings, Los Angeles, State of California, heard this matter.

Brain Walsh, Deputy Attorney General, represented Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant).

Donna Tatum (Respondent) appeared and represented herself.

Oral and documentary evidence was received. The record was held open until May 16, 2008 to allow Respondent to submit additional documents bearing on her rehabilitation; to allow Complainant to file any objections to the admission of those documents; and to allow Complainant to obtain a certified copy of Exhibit 5, an Order of Denial from the Arizona State Board of Nursing. Respondent timely submitted a three page academic transcript from the Ventura Community College District and four pages of continuing medical education certificates, which were marked for identification as Respondent's Exhibit A, and three pages of her 'drinking driver program' completion report and fine payment report, marked for identification as Respondent's Exhibit B. Complainant made no objection to the admission of these exhibits and Exhibits A and B were admitted into evidence. Complainant timely submitted a certified copy of Exhibit 5. The record was closed on May 16, 2008.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Complainant brought the Accusation in her official capacity as Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California (Board).

2. On or about January 19, 1989, Respondent became licensed as a Vocational Nurse under Vocational Nurse License No. VN 143008. At all relevant times, the license was in full force and effect until it expired on March 31, 2008 and was not renewed. The evidence did not establish why the license was not renewed.

Conviction

3. On June 13, 2005, in the Superior Court of California, County of Ventura, Respondent was convicted, on her nolo contendere plea, of violating Vehicle Code section 23152, subdivision (b), (driving with a blood alcohol level of .08% or higher), a misdemeanor.

4. The court suspended imposition of sentence and placed Respondent on formal probation for 36 months under certain terms and conditions, including serving 48 hours in jail (Respondent was ordered to report to the Sheriff by June 16, 2005), completing a 90-day drunk driving program, and paying fines and fees totaling \$2,562. Respondent's driver's license was suspended for 90 days.

5. The facts and circumstances surrounding the conviction are that, on June 9, 2004, at age 53, Respondent drove a vehicle while intoxicated with a blood alcohol level measuring more than .08 percent. An hour earlier, Respondent had consumed alcohol while celebrating at her daughter's going away party. Respondent did not think she was impaired when she drove her vehicle. However, a police officer observed Respondent weaving across the solid double yellow center lane lines on Ventura Road, near the US 101 Johnson Road freeway offramp. Respondent failed her field sobriety tests. Her eyes were red and watery, she had an unsteady gait and her breath smelled of alcohol. The police officer determined her to be under the influence of alcohol. A breathalyzer machine measured her blood alcohol level at .11 and .10 percent.

Denial of Application

6. On June 6, 2004, Respondent applied for a license as a practical nurse with the Arizona State Board of Nursing. On November 16, 2005, that board denied her application by Order of Denial no. 0408158. The Arizona board based its denial on Respondent's 2005 conviction and on telephone interviews it conducted with her former hospital employers.

Disclosure of Conviction

7. On March 30, 2006, Respondent filed an Application for Renewal of License with Complainant. In response to Question 11,

“SINCE YOU LAST RENEWED YOUR LICENSE, HAVE YOU EVER BEEN CONVICTED OR PLED NOLO CONTENDERE TO ANY VIOLATION OF ANY LAW OR ANY STATE IN THE UNITED STATES OR A FOREIGN COUNTRY? (You are required to list any conviction that has been set aside and/or dismissed under Penal Code section 1203.4.) If ‘YES,’ please attach explanation,

Respondent marked the box “YES.” Question 11 asked her to attach an explanation, and Respondent wrote “Traffic Tickets 2004.”

8. Respondent believed she complied with the law and disclosed her conviction when she marked the box “YES” and described it as being for traffic violations in 2004. Respondent believed her conviction for driving with a blood alcohol level above .08 percent was a misdemeanor traffic ticket. She did not believe the question asked her for a full explanation because there wasn’t enough space provided on the form. This testimony is determined to be credible because Respondent did correctly mark the box “YES” and thus alerted the Board of her 2004 “nolo contendere plea to any violation of law.” However, she did not attach a separate explanation as requested. While Respondent’s failure to attach a detailed explanation and her characterization that her Vehicle Code conviction (in which she served 48 hours in county jail) was a 2004 traffic ticket certainly minimized the offense, she did not demonstrate an intent to mislead the Bureau that she had never plead nolo contendere to any violation of law.

Rehabilitation

9. Respondent served two days in county jail after her conviction. Respondent completed her three month drinking driver program by November 19, 2007. That program consisted of three 90-minute face to face sessions, 12 hours of alcohol education and 18 hours of group sessions. Initially, Respondent had difficulty paying her fines because she “lost her nursing license” which affected her income and her ability to pay her probationary fines. However, those fines are now paid in full. Respondent also attended some Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings. She remains on probation for one more year, and has not obtained an expungement under Penal Code section 1203.4.

10. Respondent completed general education and nursing courses at Moorpark College and Ventura College from Fall 1988 through Spring 2007, a period of almost 19 years. While Respondent passed many of her courses, she has been

unable to pass Elementary Algebra after five attempts. Nonetheless, she demonstrated tenacity in pursuing her educational goals. At Ventura College, Respondent completed a Health and Wellness course during the Fall 2006 semester and a Principles of Human Biology Course during the Spring 2007 semester. On March 31, 2006, Respondent completed the Setting Healthy Boundaries course offered by Nursing Education of America. On March 31, 2008, she completed a five hour Autism Spectrum Disorder course, a 15 hour Diabetes Care and Patient Education course, and a 10 hour Herbal Medications course offered by CME Resource. Respondent is required to complete 30 hours of continuing medical education every two years.

11. Respondent is married and cares for her husband, who suffered a heart attack late last year. Her husband appeared at the administrative hearing to show his support for Respondent's licensure. During the past two years, Respondent has worked at Ventura Convalescent Hospital. She considers herself to be a good nurse. Respondent did not submit any character reference letters or employer reviews.

12. There was no evidence of previous discipline against Respondent.

Costs

13. The Board's actual cost of investigation and prosecution of this matter, including fees of the Attorney General, is \$4,129.25.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists pursuant to Business and Professions Code sections 490 and 2878, subdivision (f), and California Code of Regulations, title 16, section 2521, to revoke or suspend Respondent's vocational nurse license for having been convicted of a crime which is substantially related to the qualifications, functions or duties of a licensed vocational nurse, based on Factual Findings 3, 4, and 5.

2. Business and Professions Code section 490 and section 2878, subdivision (f) authorize the Board to suspend or revoke a license when it finds the licensee has been convicted of a crime which is substantially related to the qualifications, functions or duties of a licensed vocational nurse.

3. California Code of Regulations, title 16, section 2521 deems that a crime is substantially related to the qualifications, functions or duties of a licensed vocational nurse if, to a substantial degree, it evinces a present or potential unfitness of the licensee to perform the functions authorized by her license in a manner consistent with the public health, safety or welfare.

4. Because Respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level exceeding .08 percent, and she weaved across the center lane divider near a freeway offramp, her conduct evinced poor judgment in her consumption and use of alcohol, and evinced a potential unfitness to perform the functions of a licensed vocational nurse, as set forth in Factual Findings 3, 4 and 5.

5. Cause exists pursuant to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (b), to revoke or suspend Respondent's vocational nurse license for having committed unprofessional conduct by using alcohol in an injurious way, based on Factual Findings 3, 4 and 5. When Respondent consumed alcohol and thereafter drove her car an hour later, her use of alcohol caused her to weave across the center divider near a freeway offramp, a potentially dangerous encounter to herself and others.

6. Business and Professions Code section 2878, subdivision (a), authorizes the Board to suspend or revoke a license when it finds the licensee has committed unprofessional conduct. Business and Professions Code section 2878.5, subdivision (b) defines unprofessional conduct as the licensee's use of an alcoholic beverage in a manner dangerous or injurious to herself, any other person, or the public.

7. On June 9, 2004, when Respondent drove with a blood alcohol level which measured .10 percent, her alcohol use resulted in conduct dangerous to herself and the public because she was weaving across the center divider on a public road near a freeway offramp.

8. Driving under the influence of alcohol has been criminalized because it represents a threat of physical injury to other persons. (*People v. Eribarne* (2004) 124 Cal.App.4th 1463.) "[A] person who is driving while under the influence of alcohol and/or drugs is always a threat and the purpose of [Vehicle Code] section 23152 is to prohibit those 'extremely dangerous' persons from driving anywhere in California." (*People v. Malvitz*, (2002) 11 Cal.App.4th 9, 14.) "The drunken driver cuts a wide swath of death, pain, grief, and untold physical and emotional injury across the roads of California and the nation." (*Burg v. Municipal Court* (1983) 35 Cal.3d 257, 261.)

9. Cause exists pursuant to Business and Professions Code sections 2878, subdivision (a), and 2878.5, subdivision (c), to revoke or suspend Respondent's vocational nurse license for having committed unprofessional conduct, based on Factual Findings 3, 4 and 5.

10. Business and Professions Code section 2878.5, subdivision (c) provides that it is unprofessional conduct for a licensee to be convicted of a crime involving the consumption, among other things, of an alcoholic beverage.

11. Cause exists pursuant to Business and Professions Code section 2878.8, to revoke or suspend Respondent's license for having been denied an application for licensure by the Arizona State Board of Nursing based on her alcohol-related conviction, based on Factual Findings 6.

12. Business and Professions Code section 2878.8, authorizes the Board to discipline any license based upon that licensee's denial of licensure by another state agency.

The board may deny any application or may suspend or revoke any license issued under this chapter based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline.

13. The Board alleges that, under the provisions of Business and Professions Code section 2878.8, Respondent's "underlying conduct" which caused the Arizona State Board of Nursing to deny Respondent a license may also be used as grounds for discipline as unprofessional conduct under the provisions of Business and Professions Code section 2878, subdivisions (a) and (d). The "underlying conduct" as set forth in Factual Finding 6, was Respondent's conviction and "unsatisfactory performance reviews" by Respondent's former employers. Respondent's actual "unsatisfactory performance" was not established by direct, clear or convincing evidence. Thus cause does not exist, as alleged in the Fourth Cause for Discipline, for the Board to discipline Respondent's license for her "underlying conduct," other than her alcohol-related conviction, which has already been established and for which Respondent's license is disciplined, as set forth below.

14. Cause does not exist to revoke or suspend Respondent's license pursuant to Business and Professions Code section 2878, subdivisions (a) and (e), for having committed unprofessional conduct by providing a false statement on her Application for Renewal of License, based on Factual Findings 7 and 8.

15. Business and Professions Code section 2878, subdivision (e), authorizes the Board to revoke or suspend a license if the licensee makes or gives any false statement or information in connection with the application for issuance of a license.

16. The evidence established that Respondent did not make a false statement on her re-application form when she answered "YES" to the question, "have you plead nolo contendere to any violation of law." Respondent's explanation

that her 2005 conviction was based on 2004 traffic tickets did not demonstrate that her admission to the conviction was false; Respondent did violate the Vehicle Code in 2004 for a misdemeanor vehicle code traffic violation. However, she did minimize her alcohol use by not attaching a full explanation as requested by the reapplication.

Criteria for Rehabilitation

17. The criteria for determining a licensed vocational nurse's rehabilitation is set forth in California Code of Regulations, title 16, section 1445.

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

18. Nature and severity of the crime: Her blood alcohol level was measured at .10 and .11 percent. Respondent caused no injury or damage.

19. Total criminal record: At age 53, Respondent suffered her first conviction in 2005 based on a 2004 alcohol related arrest. Respondent has committed no subsequent acts which would be grounds for discipline. It appears to have been an aberrant act.

20. The time elapsed: Four years have passed since Respondent's arrest. Almost three years have passed since her conviction.

21. Compliance with probation: Respondent has complied with all the terms and conditions of her probation. Her previous difficulty in paying her fines and fees on a timely basis was explained by her unemployed status. Respondent

overcame that obstacle; her fines are paid and her three month drunk driver program is completed.

22. Evidence of expungement: Respondent remains on probation for another year. The court has not expunged her conviction.

23. Evidence of rehabilitation: Since the conviction, Respondent completed academic coursework and furthered her vocational training. In 2006/2007, Respondent earned six semester credits from Ventura College in health and biology courses. In so doing, she continued her 19 years of study through the Ventura Community College District. In 2006 and 2008, she completed her Board-required 60 hours of continuing medical education credit. Respondent is married and cared for her husband after his recent heart-attack.

Disciplinary Guidelines

24. California Code of Regulations, title 16, sections 2524 and 2579.10 authorizes the Board to use its adopted guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines," (Rev. 1/1/2000), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

25. Those guidelines detail the factors which should be considered in determining whether revocation, suspension or probation should be given in a disciplinary action:

The nature and severity of the acts or crimes under consideration;
Actual or potential harm to the public;
Actual or potential harm to any patient;
Prior disciplinary record;
Number and/or variety of current violations;
Mitigation evidence;
Rehabilitation evidence;
Compliance with terms of court ordered probation;
Overall criminal record;
Time passed since the acts or offenses occurred;
Evidence of expungement proceedings pursuant to Penal Code section 1203.4.

26. Respondent was convicted of driving with a blood alcohol content of .08 or higher, an act dangerous to herself and to others. In mitigation, there was no actual harm to the public, only potential harm. Patient care was not involved. There was no evidence of prior disciplinary proceedings. Respondent consumed alcohol at a celebratory event, and not on a “drunken binge.” This was Respondent’s only criminal conviction in 57 years, and she has not re-offended. Four years have passed since her offense. There was no evidence of previous history of Board discipline against Respondent after 19 years of licensure.

27. Respondent established she has made considerable progress in her rehabilitation; she has completed her alcohol program; and she has pursued formal education for 19 years with the Ventura Community College District, completing two semester-long science classes after her conviction. Respondent has paid her fines and is in compliance with her probation, which ends in one year. The conviction has not been expunged. She has complied with her Board-required CME educational courses. Respondent has met most of the criteria for rehabilitation applicable to her.

28. Respondent’s evidence of mitigation and rehabilitation, demonstrates that the imposition of the minimum penalty against her license is justified. The public interest will be adequately protected with the below order.

29. The Board’s Disciplinary Guidelines set forth the minimum penalty for violating Business and Professions Code sections 490, section 2878, subdivisions (a), (f), section 2878.5, subdivisions (b), (c), section 2878.8, and California Code of Regulations, title 16, section 2521: License revocation, stayed, a two year probation with standard terms 1-12, plus optional terms and conditions of probation 17, 18, 19, and 20, for having an alcohol related conviction.

Costs

30. Except as modified below, cause exists to order Respondent to pay the Board the sum of \$4,129.25 for its costs incurred in connection with the investigation and prosecution of this action, under Business and Professions Code section 125.3, as set forth in Finding 13.

31. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a statute authorizing a prevailing state board to recover the costs of the investigation and prosecution of the case. *Zuckerman*, supra, at 45. Under *Zuckerman*, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. “Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed.” (*Id.*) The Board, in imposing costs in such

situations, must consider the licensee's subjective good faith belief in the merits of his or her position; and the Board must consider whether or not the licensee has raised colorable claim. The Board must consider the licensee's ability to make payment. Finally, the Board "... may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct". (*Id.*, footnote omitted.)

32. Considering the fact that Respondent has prevailed on two of five alleged causes for discipline, it is reasonable to reduce the cost award by two-fifths. Accordingly, the Administrative Law Judge determines that Respondent should pay the Board three fifths of the costs it claimed, which equates to \$2,477.55.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

A. Within 120 days of the effective date of this Order, Respondent may apply to the Board for the renewal of her vocational nurse license. In the event Respondent fails to make application for renewal within 120 days of the effective date of this Order, her license, together with all licensing rights appurtenant thereto, shall be revoked. In the event Respondent timely makes application for license renewal, the Board shall proceed to renew Respondent's Vocational Nurse License Number VN 143008. The license shall be immediately revoked and the revocation stayed for a period of two years, under the following terms and conditions:

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law to the Board within five days of occurrence. To ensure compliance with this term, respondent shall submit two completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by the Respondent as part of his/her licensure application process effective July 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself/herself within thirty days of the effective date of the decision.

2. COMPLIANCE WITH PROBATION PROGRAM AND
QUARTERLY REPORT REQUIREMENTS

Respondent shall fully comply with terms and conditions of the probation established by the Board and shall cooperate with the representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board. The reports shall certify and document compliance with all the conditions of probation.

3. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER
CHANGE(S)

Respondent shall notify the Board, in writing, within five days of a change of residence or mailing address, of his/her new address and any change in his/her work and/or home telephone numbers.

4. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF
STATE

Respondent shall notify the Board, in writing, within five days, if he/she leaves California to reside or practice in another state.

Respondent shall notify the Board, in writing, within five days, upon his/her return to California.

The period of probation shall not run during the time Respondent is residing or practicing outside California.

5. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, Respondent shall notify his/her employer of the probationary status of Respondent's license. This notification to the Respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical

Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board, shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

6. INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board, or its designated representatives.

7. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

During probation, the Respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than six continuous months and of no less than twenty hours per week.

While on probation, Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

8. SUPERVISION REQUIREMENTS

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as a licensed vocational nurse or psychiatric technician.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

9. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at his or her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation; or the Respondent shall be suspended from practice, until he or she has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Board shall notify the Respondent of the course content and number of contact hours required. Within thirty days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Board within thirty days of course completion.

10. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. COST RECOVERY REQUIREMENTS

Where an order for recovery of costs is made, the Respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code Section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one year, the license of any respondent who demonstrates financial hardship. The Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one year period.

Except as provided above, the Board shall not renew or reinstate the license of any Respondent who has failed to pay all the costs as directed in a Decision.

12. VIOLATION OF PROBATION

If the Respondent violates the conditions of his/her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the Respondent's license will be fully restored.

13. CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS

Within five days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Verified documentation of attendance shall be submitted by the Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation.

14. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

15. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

16. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the Respondent's current employer.

B. Respondent shall pay to the Board the sum of \$2,477.55 as and for its costs recovery. This sum shall be paid to the Board in an installment plan and a time frame which the Board considers to be appropriate. Respondent's failure to make timely payment may be deemed a violation of probation by the Board.

Dated: June 13, 2008


DEBORAH MYERS
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. VN 2005-1646

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 BRIAN G. WALSH, State Bar No. 207621
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2535
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2005-1646

12 DONNA TATUM
5656 Aurora Drive
13 Ventura, CA 93003

A C C U S A T I O N

14 Vocational Nurse License No. VN 143008

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
21 Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

22 2. On or about January 19, 1989, the Board issued Vocational Nurse License
23 No. VN 143008 to Donna Tatum (Respondent). The Vocational Nurse License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on March 31, 2008,
25 unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 2875 of the Business and Professions Code (Code) provides, in
7 pertinent part, that the Board may discipline the holder of a vocational nurse license for any
8 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
9 Act.

10 5. Section 118(b) of the Code provides, in pertinent part, that the expiration
11 of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during
12 the period within which the license may be renewed, restored, reissued or reinstated. Under
13 section 2892.1 of the Code, the Board may renew an expired license at any time within four years
14 after the expiration.

15 6. Section 125.3 of the Code provides, in relevant part, that the Board may
16 request the administrative law judge to direct a licentiate found to have committed a violation or
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
18 and enforcement of the case.

19 7. Section 490 of the Code provides, in pertinent part, that the Board may
20 suspend or revoke a license when it finds that the licensee has been convicted of a crime
21 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

22 8. Section 2878 of the Code states:

23 The Board may suspend or revoke a license issued under this chapter [the
24 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of
the following:

25 (a) Unprofessional conduct, which includes, but is not limited to, the
26 following:

27

28 (6) Failure to report the commission of any act
prohibited by this section.

1 (d) Violating or attempting to violate, directly or indirectly, or
2 assisting in or abetting the violating of, or conspiring to violate any provision or
3 term of this chapter.

4 (e) Making or giving any false statement or information in connection
5 with the application for issuance of a license.

6 (f) Conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensed vocational nurse, in which event the record of
8 the conviction shall be conclusive evidence of the conviction.

9 9. Section 2878.5 of the Code states:

10 In addition to other acts constituting unprofessional conduct within the
11 meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional
12 conduct for a person licensed under this chapter to do any of the following:

13

14 (b) Use any controlled substance as defined in Division 10 of the
15 Health and Safety Code, or any dangerous drug as defined in Section 4022, or
16 alcoholic beverages, to an extent or in a manner dangerous or injurious to himself
17 or herself, any other person, or the public, or to the extent that the use impairs his
18 or her ability to conduct with safety to the public the practice authorized by his or
19 her license.

20 (c) Be convicted of a criminal offense involving possession of any
21 narcotic or dangerous drug, or the prescription, consumption, or
22 self-administration of any of the substances described in subdivisions (a) and (b)
23 of this section, in which event the record of the conviction is conclusive evidence
24 thereof.

25

26 10. Section 2878.8 of the Code states:

27 The board may deny any application or may suspend or revoke any license
28 issued under this chapter [the Vocational Nursing Practice Act] based upon the
denial of licensure, suspension, restriction, or other disciplinary action of a license
by another state, any other government agency, or by another California health
care professional licensing board. A certified copy of the finding shall be
conclusive evidence of that action provided that, if from another state, the findings
establish an act which if committed in California would be grounds for discipline.

29 11. California Code of Regulations, title 16, section 2521, states, in relevant
30 part:

31 For the purposes of denial, suspension, or revocation of a license pursuant
32 to Division 1.5 (commencing with Section 475) of the Business and Professions
33 Code, a crime or act shall be considered to be substantially related to the
34 qualifications, functions or duties of a licensed vocational nurse if to a substantial
35 degree it evidences present or potential unfitness of a licensed vocational nurse to

1 perform the functions authorized by his license in a manner consistent with the
2 public health, safety, or welfare.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of a Substantially Related Crime)**

5 12. Respondent is subject to disciplinary action under section 2878,
6 subdivision (f) and 490 of the Code, as defined in California Code of Regulations, title 16,
7 section 2521, in that Respondent has been convicted of a crime substantially related to the
8 qualifications, functions or duties of a licensed vocational nurse, as follows:

9 a. On or about June 13, 2005, Respondent was convicted by the Court on a
10 plea of nolo contendere for violating one count of Vehicle Code section 23152, subdivision (b), a
11 misdemeanor (driving while having .08% and more by weight of alcohol in his blood), in the
12 Superior Court of California, County of Ventura, Ventura Judicial District, Case
13 No. 2004022629, entitled *The People of the State of California v. Donna Charlene Tatum*.

14 b. The circumstances surrounding the conviction are that on or about June 9,
15 2004, Respondent drove a vehicle, while having 0.08% and more, by weight of alcohol in her
16 blood.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 13. Respondent is subject to disciplinary action under section 2878,
20 subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section
21 2878.5, subdivision (b), in that on or about June 9, 2004, Respondent used alcoholic beverages to
22 an extent or in a manner dangerous or injurious to herself, and the public, when she operated a
23 vehicle, while having 0.08% and more, by weight of alcohol in her blood.

24 ///

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE FOR DISCIPLINE

(Conviction Involving the Consumption of Alcohol)

14. Respondent is subject to disciplinary action under section 2878, subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in section 2878.5, subdivision (c), in that on or about June 13, 2005, Respondent was convicted of a crime involving the consumption of alcohol, as set forth in paragraph 12 above.

FOURTH CAUSE FOR DISCIPLINE

(Arizona State Board of Nursing Denial of Licensure)

15. Respondent is subject to disciplinary action under section 2878, subdivisions (a) and (d) of the Code, on the grounds of unprofessional conduct, as defined in section 2878.8, in that effective January 26, 2006, the Arizona State Board of Nursing denied Respondent's application for licensure in that state, based on Respondent's 2005 conviction for driving under the influence of alcohol and unsatisfactory performance reviews by several facilities in California, where Respondent was employed as a licensed vocational nurse. The underlying conduct of Respondent which resulted in denial of her license (as described in the Order of Denial, issued November 16, 2005, in the subject disciplinary matter by the Arizona State Board of Nursing) is also a basis for discipline in this state.

FIFTH CAUSE FOR DISCIPLINE

(Making or Giving a False Statement or Information)

16. Respondent is subject to disciplinary action under section 2878, subdivisions (a) and (e) of the Code, on the grounds of unprofessional conduct, in that on or about March 30, 2006, Respondent made or gave a false statement or information on her Application for Renewal of License. Although Respondent signed the application under penalty of perjury, she failed to disclose her June 2005 conviction for driving under the influence of alcohol.

///

///

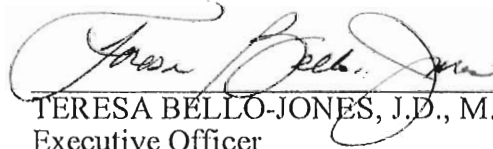
///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board issue a decision:

- 4 1. Revoking or suspending Vocational Nurse License No. VN 143008, issued
5 to Donna Tatum;
- 6 2. Ordering Donna Tatum to pay the Board the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3; and
- 9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: November 5, 2007

12
13 

14 TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Board of Vocational Nursing and Psychiatric Technicians
17 State of California
18 Complainant
19
20
21
22
23
24
25